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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,003	02/20/2002	Nahoko Takano	Q68521	4722
7590 03/28/2008 SUGHRUE, MION, ZINN, MACPEAK & SEAS, PLLC 2100 Pennsylvania Avenue, N.W. Washington, DC 20037-3213				
EXAMINER ELALLAM, AHMED				
ART UNIT 2616		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

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Continuation:

Applicant argument is fully considered, but does not place the application in condition for allowance for the following reasons:

As to claim 10:

Applicants argues that:

*"While the APA discloses the mobile station transmits the code word representing the combination of the base station identifiers of the base stations determined as the transmitting base stations, no portion of the APA discloses anything about the number of base stations having radio links set up with said mobile station. Further, no portion of the APA discloses that any such number is notified to other base stations using the base station control unit". Italics added. Applicants submitted that that "base stations determined as the transmitting base stations do not correspond to number of said base stations having radio links set up with said mobile station".*

Applicants concludes that *"those base stations having radio links set up which have a low reception quality are not represented in code words because there are not determined to be transmitting base stations. Consequently, of all the base stations having radio links set up, those of high reception quality are represented in code words. Therefore, the code words do not represent the number of base stations having links set up, such as those of low reception quality".*

Examiner respectfully disagrees, and reiterates the previous argument presented in the final office action. In addition, Examiner notes that contrary to Applicants

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assertions, it is implicit to admitted prior art that Base stations with measured signal strength below a certain threshold are not considered in the code word **representing the combination of the base station identifiers of the base stations determined as the transmitting base stations to the base stations having the links set up.**

Applicants appear to ignore the teaching of references cited, see for Blakeney et al and Gillhousen et al as an example. It was also noted contrary to Applicants, that the APA discloses the code words having the respective base station identifiers is transmitted to each base station is under the control of the base station control unit.

of APA **in which the mobile station transmits the code word representing the combination of the base station identifiers of the base stations determined as the transmitting base stations to the base stations having the links set up** reads on the disputed limitation, because the combination of base station identifiers implicitly provide for the number of base stations having the link set up among the total number of the base stations, based on the reception quality of the pilot signals transmitted by the base stations. The APA further discloses a **base station control unit for controlling the base stations having the links set up determines base station identifiers of the plurality of base stations for having the links set up respectively when the mobile station starts the soft handover.**

As to claim 11:

Applicants submitted that *"the APA fails to disclose, at least, "base stations having radio links set up with said mobile station and a base station control unit assigning base station identifiers to said base stations in a predetermined*

*order, wherein said base station control unit has first means for notifying each base station of the base station identifiers assigned to said base stations." Applicants further submitted that "neither this portion of the APA, nor any other portion of the APA disclose that it is the base station control unit that assigns base station identifiers to said base stations, or further, notifies each base station of the identifiers".*

Examiner respectfully disagrees, because the code words having the respective base station identifiers is transmitted to each base station is under the control of the base station control unit, as shown in the final rejection.

Further Applicants argue that the limitation "*assigning base station identifiers to base stations in predetermined order*" is recited after the term "*comprising*," and this in not part of the preamble and should be given patentable weight".

In response Examiner disagrees, the preamble of claim 11 reads as follow:

**"A cellular system using a code division multiple access mode and comprising a mobile station, base stations having radio links set up with said mobile station and a base station control unit assigning base station identifiers to said base stations in a predetermined order, wherein:"**

From the above preamble, although the disputed feature is after the term comprising, it is not in the **body** of the claim. Therefore it is not given patentable weight.

AS to claim 23:

Applicants stated that "*Further, because all the apparatus features recited in claim 23 follow the term "including," Applicants submit the Examiner's contention that these features are merely part of the preamble is improper. (See rejoinder rules MPEP §*

*821.04 for allowance of a method claim that requires all the limitations of an allowed product claim). Obviously, this is based on the premise that the produce limitations are to be given patentable weight".*

In response, Examine notes that claim 23 is not an apparatus claim. Additionally, the term "including" does not appear in the claim at all. Examiner concludes that Applicants argument appear to be clearly in error with regard to the issues previously discussed in the final rejection.

### **Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AHMED ELALLAM whose telephone number is (571)272-3097. The examiner can normally be reached on 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi H. Pham can be reached on (571) 272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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3/20/08

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